

Staff Summary Report



City Council Meeting Date: 09/11/08

Agenda Item Number: 55

SUBJECT: This is the introduction and first public hearing for a Code Text Amendment for ZONING AND DEVELOPMENT CODE AMENDMENTS. The second public hearing is scheduled for October 2, 2008

DOCUMENT NAME: 20080911dsrl01

ZONING AND DEVELOPMENT CODE (0414-04, 0414-06)

SUPPORTING DOCS: Yes

COMMENTS: Request for **ZONING AND DEVELOPMENT CODE AMENDMENTS (PL080143)** (City of Tempe Development Services, applicant) consisting of changes within the development Code, providing reinvestment opportunities in our residential neighborhoods relating to provisions for alternative fence heights in the front yard (Section 4-706), reduced rear and side yard building setbacks when adjacent to an alley (Section 4-202), and time limitations when holding a required neighborhood meeting (Sections 6-401 & 6-402). The request includes the following:

ZOA08001 – (Ordinance No. 2008.28) Code Text Amendment for the Zoning and Development Code Sections 4-202, 4-706, 6-401 and 6-402.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)
Ryan Levesque, Senior Planner (480-858-2393)

REVIEWED BY: Lisa Collins, Development Services Planning Director (480-350-8989)
Chris Anaradian, Development Services Manager (480-858-2204)

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (480-350-8814)

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

Development Review Commission – Approval of Section 4-706 (fence heights in single family front yards) (4-3 vote); Approval of Sections 4-202 (rear & side yards & single family lot setbacks) as amended, 6-401 (computation of time for meetings) and 6-402 (limitation on time between neighborhood meeting & public hearing) (7-0 vote)

ADDITIONAL INFO: A neighborhood meeting is not required with this application. This amendment proposal was provided to the Neighborhood Advisory Commission on June 7, 2008. The Development Review Commission continued this request on July 8, 29, and August 12, 2008, and recommended approval of the request on August 26, 2008. The Commission took separate actions on the sections, specifically Section 4-706, receiving a recommendation of approval with some dissenting votes on a proposed provision for alternate fence and wall heights in the front yard building setback.

PAGES:

1. List of Attachments
- 2-4. Comments
4. Reason for Approval / History & Facts / Reference

ATTACHMENTS:

- 1-4. Ordinance No. 2008.28
5. Letter from Neighborhood Advisory Commission
6. Letter from resident on wall height provisions
- 7-13. Examples of increased wall height approvals
14. E-mail reply from resident on wall height provisions (8-20-08)

COMMENTS:

Provided is a list of items proposed for amendments to the Zoning and Development Code. These items primarily pertain to promoting reinvestment within our residential neighborhoods by allowing greater flexibility in the Code regulations. These changes are consistent with previous approvals granted from past applications. Additionally there is a recommendation to place time limitations on when neighborhood meetings may be set, including other clarifying amendments to this section. Below are the proposed amendments to the Code along with explanations. At the July 29, 2008 Development Review Commission public input was provided, including discussion and comments from the Commission. As a result, staff had made further modifications to the code text amendments, which include specific recommendations by the Development Review Commission now being forwarded to City Council for further consideration.

Sec. 4-706 (A)(1), Wall Heights

The Code currently requires walls within the required front yard building setback to have a maximum height of 4'-0". The request is to allow for additional wall height greater than 4'-0", subject to processing of a use permit (public hearing) with specific approval criteria. Several requests have been processed for wall height increases in the front yard setback (see chart below), as well as undocumented customer inquiries to build taller fencing. Requests would be reviewed on a case-by-case basis in terms of compatibility and could allow elements such as archways and fencing that would still allow visual surveillance of the surrounding area. See Attachment 2, Section 2 & Attachment 3, Section 5 of Ordinance change.

Requests 2003-2008	# of Requests	Approvals	Denials	Average Height	Range
Wall Height Variances	10	7	3	6'-4"	4'-0" to 8'-0"

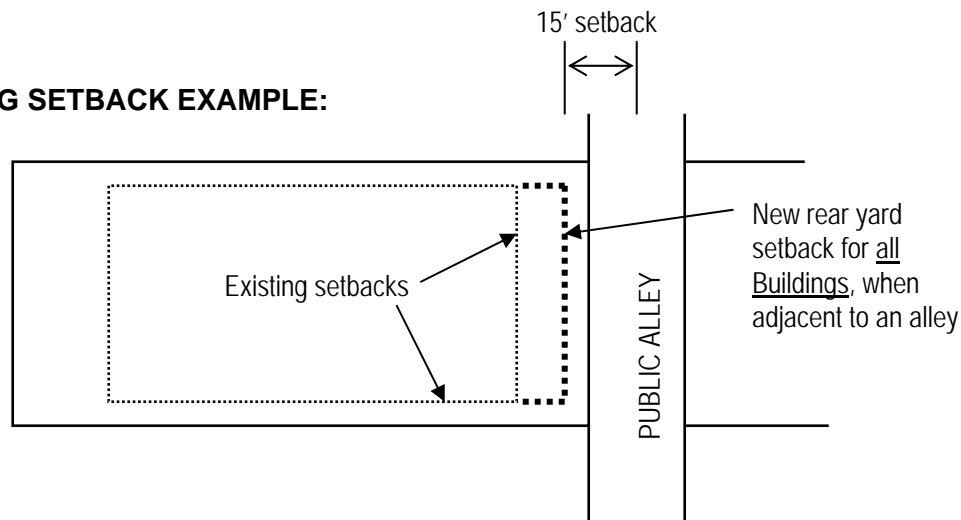
Sec. 4-202, Rear Yard Building Setbacks

Last year a Code amendment was adopted that allowed "accessory buildings" to be located closer to the rear yard property line when adjacent to a public alley; the setback modification allowed for the rear yard to be measured from the centerline of the alley. The recommended amendment would allow this provision as well for the "rear yard building" setbacks in a single-family zoning district. Nine requests for rear yard setback reductions have been processed in the past five years (See chart below). If adjacent to a dedicated public alley (typically 20'), rear building setbacks would be measured at the centerline of the alley providing a portion, 10' in this case, of the required setback, ranging from 15'-0" to 35'-0" based on the district. The rationale behind the recommended change is that rear yard setbacks are intended to provide adequate separation from adjoining properties in a single-family neighborhood, while still maintaining a private yard for the personal enjoyment of the neighboring residents. If an alley exists, there is perceived to be less imposition on the properties to the rear. Past application requests also identify more favorable support for rear yard setback reduction when adjacent to an alley. See Attachment 1, Section 1 of Ordinance change.

Requests 2003-2008	# of Requests	Approvals	Denials	Average Setback	Range
Rear Yard Setback Variances	9	6	3	7'-6"	15'-0" to 1'-0"

At the Development Review Commission hearing a Commission member asked to look into other zoning districts for this provision. Staff had followed up with further changes that would grant such relief in Tempe's multi-family zoning districts. In some cases in the city, for example the Maple-Ash Neighborhood, we have single-family homes built on multi-family zoned properties. This text change would be consistent and compliment areas such as these that have been granted relief from the rear yard setback when building either a secondary dwelling or detached building that is accessible from the alley. The Development Review Commission also recommended allowing relief when a side yard setback is adjacent to a public alley. This recommendation is provided in the ordinance attachment.

R1-6 ZONING SETBACK EXAMPLE:



Sec. 6-402, Neighborhood Meetings

This recommendation establishes a range of time required for a neighborhood meeting when part of a development project. There is currently a requirement time period so that a neighborhood meeting cannot be held too close to the time of the first public hearing, but there is no maximum amount of time from a public hearing established for such a meeting. This change is in response to concerns raised by the Development Review Commission on a previous project that had complied with the requirements of a neighborhood meeting, but did not hold its first public hearing until well after the initial neighborhood meeting, more than one year. Because of the potential for a large gap in time from the initial neighborhood meeting to the first public hearing, staff recommends a maximum of one (1) year from a neighborhood meeting to the first public hearing. This would allow a project to garner preliminary feedback and respond to any suggested changes before submitting a formal application, with subsequent hearings scheduled in accordance with the City's procedures. If a project's first public hearing for a request extends beyond one year from the date of a neighborhood meeting, the applicant will be required to hold another neighborhood meeting, no earlier than fifteen days before the first public hearing.

Staff also recommends providing a consistent notification period requirement for all notices. The notification time period for the neighborhood meeting is 14 days. This modification would be consistent with all other public hearing notices, fifteen (15) days. In addition, staff recommends adding requirements to the 16 square foot neighborhood meeting signs to also include future corresponding hearing dates. This is a current practice of the Development Services Department, working with the applicant to supply accurate information on the signs that are all inclusive of the scheduled meetings. These type of requests are typically for the major development projects that have an extended process time period with multiple hearing dates. See Attachment 2-3, Section 3-4 of Ordinance change.

Public Input

On June 7, 2008 the Neighborhood Advisory Commission recommended support of the proposed changes in the Zoning and Development Code. One comment from the Neighborhood Advisory Commission suggested providing illustrations in the Code, demonstrating the type of acceptable wall height allowances. Staff recommends at this time not to include any illustrations because the requested height is subject to a use permit approval process. This will avoid potential confusion from customers that by simply following the illustration the additional wall height would automatically be granted. These requests would be evaluated on a case by case basis to determine whether the applicants request meets the criteria for granting a use permit.

Staff received an e-mail from a resident regarding concerns for additional wall heights and not being able to address the materials (see attachment). Staff has since revised the code text amendments to clarify differences in height allowances and that materials are considered when reviewing the request. The resident was provided copies of the revised language and was satisfied with the changes as noted in the e-mail attachment. On July 7, 2008 staff received another inquiry from a resident on the proposed code text amendments, requesting additional review time. Continuance was granted at the July 29, 2008 Development Review Commission hearing to also address Commission comments. Communication was sent via e-mail to the resident that spoke at the hearing including copies of proposed code text changes. At this time, no additional follow up has been made with staff regarding any specific concerns to the amendments. The resident was in attendance at the hearing when the Commission recommended approval of attached ordinance amendments.

REASONS FOR APPROVAL:

1. The proposed amendments meet the goals and objectives of the General Plan.
2. The setback reductions for buildings and alternate wall height provisions implements the General Plan's Neighborhood Element by encouraging reinvestment and redevelopment appropriate to each neighborhood, by promoting neighborhood preservation and enhancement within the neighborhoods.
3. The neighborhood meeting time limitation ensures current residents of an area an opportunity to voice their comments early on in the public process.

HISTORY & FACTS:

May 27, 2008	Development Review Commission reviewed at a study session a memorandum of proposed Zoning and Development Code Text Amendments regarding wall height, rear yard building setbacks and neighborhood meetings. Questions were provided by the Commission at the meeting.
June 7, 2008	Neighborhood Advisory Commission reviewed a memorandum of proposed Zoning and Development Code Text Amendments regarding wall height, rear yard building setbacks and neighborhood meetings. The Commission recommended approval of the proposed changes.
July 8, 2008	At the request of staff, the Development Review Commission continued the request for Zoning and Development Code Text Amendments included in this report, to July 29, 2008.
July 29, 2008	The Development Review Commission continued the request for Zoning and Development Code Text Amendments to August 12, 2008.
August 12, 2008	At the request of staff, the Development Review Commission continued the request for Zoning and Development Code Text Amendments to August 26, 2008.
August 26, 2008	The Development Review Commission recommended approval of Code Text Amendments for the Zoning and Development Code Sections 4-202, 4-706, 6-401 and 6-402, with a modification that in addition to rear yard setbacks, also allow side yard setbacks to measure from the midpoint of a public alley when adjacent.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-304, Zoning Map Amendments and Code Text Amendments

ORDINANCE NO. 2008.28

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE, PART 4 – DEVELOPMENT STANDARDS, SECTIONS 4-202 AND 4-706; PART 6 – APPLICATIONS AND REVIEW PROCEDURES, SECTION 6-401 AND 6-402.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That a portion of Table 4-202A and 4-202B of Section 4-202 of the Zoning and Development Code, pertaining to rear setbacks, is hereby amended to read as follows:

Table 4-202A – Development Standards in Agricultural and Single-Family Districts(1)										
Standard	AG	R1-15	R1-10	R1-8	R1-7	R1-6	R1-5	R1-4	R1-PAD	Use Permit Standard
Density (DU/Acre)	1	2.40	2.80	3.35	3.75	4	6	8	NS	NA
Minimum Net Site Area (square feet) per Dwelling	43,560 sf	15,000 sf	10,000 sf	8,000 sf	7,000 sf	6,000 sf	5,000 sf	4,000 sf except 3,000 sf for common wall	NS	NA
Minimum Lot Width (feet)	115 ft	115 ft	90 ft	80 ft	70 ft	60 ft	NS	NS	NS	10%
Minimum Lot Length (feet)	150 ft	120 ft	100 ft	100 ft	100 ft	100 ft	NS	NS	NS	10%
Maximum Height (feet) (e) [Exceptions, see Section 4-205(A)]	30 ft	30 ft	30 ft	30 ft	30 ft	30 ft	30 ft	35 ft	NS	10%
Maximum Lot Coverage (% of net site area)	25%	45%	45%	45%	45%	45%	NS	NS	NS	10%
Setback (feet) (c): [Exceptions, see Section 4-205(B)]										
Front - Building	40 ft	35 ft	30 ft	20 ft	20 ft	20 ft	20 ft	15 ft except 20 ft for garage	NS	20%
Front - Open Structures (e.g. porch, trellis, patio wall)	35 ft	30 ft	25 ft	15 ft	15 ft	15 ft	15 ft	10 ft	NS	20%
Side (F)	20 ft	15 ft	10 ft	7 ft	7 ft	5 ft (d)	5 ft (d)	5 ft (a)(d)	NS	20%
Rear (F)	35 ft	30 ft	25 ft	20 ft	15 ft	15 ft	15 ft	15 ft	NS	20%
Street Side (b)	25 ft	20 ft	15 ft	10 ft	10 ft	10 ft	10 ft	10 ft	NS	20%

NS = No Standard. NA = Not Applicable.

(1) An *overlay district* may modify the above standards. See Part 5.

(a) 0 feet for *common wall*.

(b) *Street side yard setback* for *corner lots* adjacent to *key lots* shall be increased by 10 additional feet.

(c) See also, Section 3-401 for *setbacks* applying to *accessory structures* and *buildings*.

(d) Use Permit standard does not apply.

(e) Second Story Addition or Rebuild, See Section 3-420.

(F) IF ADJACENT TO A DEDICATED PUBLIC ALLEY, SETBACK SHALL BE MEASURED FROM THE MIDPOINT OF THE ALLEY.

Table 4-202B – Development Standards in Multi-Family Districts (1)

Standard	R-2	R-3R	R-3	R-4	R-5	Use Permit Standard
Density (DU/acre)	10	15	20	25	30	NA
Minimum Lot Area per Dwelling Unit (square feet)	3,600 sf	2,900 sf	2,180 sf	1,740 sf	1,450 sf	NA
Building Height [Exceptions, see Section 4-205(A)]						
Building Height Maximum (feet)	30 ft	30 ft	30 ft	40 ft	50 ft	10%
Building Height Step-Back Required Adjacent to SF or MF District, [Section 4-404, Building Height Step-Back]	No	No	No	Yes	Yes	NA
Maximum Lot Coverage (% of net site area)	45%	45%	50%	60%	70%	10%
Minimum Landscape Area (% of net site area)	30%	30%	25%	25%	25%	10%
Setbacks (feet) (b): [Setback Exceptions, See Section 4-205(B)]						
Front						
Building	20 ft	20 ft	20 ft	20 ft	20 ft	20%
Open Structures (e.g. porch, trellis, patio wall)	15 ft	15 ft	15 ft	15 ft	15 ft	20%
Parking	20 ft	20 ft	20 ft	20 ft	20 ft	20%
Side (D)						
Building Walls	10 ft	10 ft	10ft	10 ft	10 ft	20%
Porch, Balcony, Patio Wall	5 ft (c)	5 ft (c)	5 ft (c)	5 ft (c)	5 ft (c)	20%
Common Walls	0 ft	0 ft	0 ft	0 ft	0 ft	
Rear (D)						
Building Wall, Porch, Balcony, or Patio Wall	15 ft	15 ft	15 ft	10 ft	10 ft	20%
Common Walls	0 ft	0 ft	0 ft	0 ft	0 ft	
Street Side (a)	10 ft	10 ft	10 ft	10 ft	10 ft	20%
Parking	20 ft	20 ft	20 ft	20 ft	20 ft	20%

NS = No Standard. NA = Not Applicable.

(1) An *overlay district* may modify the above standards. See Part 5.

(a) *Street side yard setback* for *corner lots* adjacent to *key lots* shall be increased by 10 additional feet.

(b) See also, Section 3-401 for *setbacks* applying to *accessory structures* and *buildings*.

(c) *Use Permit* standard does not apply.

(D) IF ADJACENT TO A DEDICATED PUBLIC ALLEY, SETBACK SHALL BE MEASURED FROM THE MIDPOINT OF THE ALLEY.

Section 2. That Section 4-706(A) of the Zoning and Development Code, pertaining to wall heights, is hereby amended to read as follows:

A. General Fence and Wall Height Standards.

1. The maximum height of any freestanding wall or fence shall be measured from the highest adjacent finished surface of the ground, paving, or sidewalk within twenty (20) feet, unless otherwise noted. ~~Walls or fences in a required front yard building setback shall be four (4) feet maximum height, including single family residential yards.~~

2. WALLS OR FENCES IN A REQUIRED FRONT YARD BUILDING SETBACK, INCLUDING WALLS FOR SINGLE-FAMILY DWELLINGS, SHALL BE FOUR (4) FEET MAXIMUM IN HEIGHT. AN INCREASE IN THE MAXIMUM FOUR (4) FOOT HEIGHT MAY BE PERMITTED SUBJECT TO A USE PERMIT. WITH A USE PERMIT, THE MAXIMUM HEIGHT MAY BE UP TO SIX (6) FEET, EXCEPT THAT AN ADDITIONAL TWO (2) FEET OF HEIGHT MAY BE PERMITTED FOR ARCHITECTURAL FEATURES INCLUDING BUT NOT LIMITED TO ARCHWAYS, PERGOLAS, AND OTHER SIMILAR FEATURES. FOR ALL HEIGHTS ABOVE FOUR (4) FEET, THE USE PERMIT SHALL DEMONSTRATE THAT A NATURAL SURVEILLANCE TO THE STREET WILL BE MAINTAINED BY INCORPORATING OPENINGS, PROVIDING TRANSPARENT MATERIALS, OR VARYING HEIGHT/MATERIALS.
- 3.2 In areas behind a required front *yard building setback* and within the required rear and side *yards*, the maximum height of walls shall be ten (10) feet, except where a taller wall is necessary to screen *service* areas under Section 4-706(G). For single-family uses, the maximum height shall be eight (8) feet;
- 4.3 The Clear Vision Requirements, Section 4-702(G), shall apply to fences and walls; AND
- 5.4 All fences and walls shall be subject to city review and approval through *development plan* review, or by approval of the Development Services Manager, or designee. Any wall in excess of six (6) feet shall require a building permit, as required by Building Code.

Section 3. That Section 6-401(C) of the Zoning and Development Code, regarding general provisions, is hereby added to read as follows:

C. COMPUTATION OF TIME. ALL TIME REQUIRED ACTIONS SHALL BE CONSISTENT WITH “COMPUTATION OF TIME” AS DEFINED IN THE TEMPE CITY CODE, SEC. 1-2, DEFINITIONS AND RULES OF CONSTRUCTION.

Section 4. That Section 6-402(C) of the Zoning and Development Code, pertaining to Neighborhood Meetings, is hereby amended to read as follows:

- C. Meeting Schedule.** The applicant is required to hold one (1) meeting, prior to the first public hearing on an application for a specific site, but may hold more if desired. The required meeting shall be held at least fifteen (15) calendar days AND NOT MORE THAN ONE (1) YEAR (365 DAYS) before the first public hearing on the application. MEETINGS HELD MORE THAN ONE (1) YEAR (365 DAYS) BEFORE THE FIRST PUBLIC HEARING SHALL BE REQUIRED TO HOLD AN ADDITIONAL NEIGHBORHOOD MEETING.

E. Notification Requirements. Notice of the meeting shall be provided by the applicant as follows:

1. The development site shall be posted with public notice about the meeting not less than ~~fourteen (14)~~ FIFTEEN (15) calendar days prior to the date of neighborhood meeting, a notice of the date, time and place and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a *public street* or road. It shall be the responsibility of the applicant to use reasonable efforts to maintain the notice once it has been placed on the subject property. ~~The Development Services Department will supply the sign(s) that shall be no smaller than six (6) square feet at a cost to the applicant.~~ It is the responsibility of the applicant to post the notice affiliated with items identified in Section 6-402(B)(2-5), with a *sign* having a minimum *sign* area of sixteen (16) square feet, WHICH SHALL INCLUDE INFORMATION ON FUTURE PUBLIC HEARINGS, PURSUANT TO SECTION 6-404(C)(2). FOR VARIANCE APPLICATIONS THE NEIGHBORHOOD MEETING SIGN(S) SHALL BE NO SMALLER THAN SIX (6) SQUARE FEET IN AREA.
2. Mailing a notice not less than ~~fourteen (14)~~ FIFTEEN (15) calendar days prior to the date of the neighborhood meeting to:
 - a. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant;
 - b. The chairperson of the registered neighborhood association(s) and home owners association(s) within six hundred (600) feet of the subject property; and
 - c. All tenants, within the boundary of the subject property(ies).

City code reference—See TCC §14A, Historic Preservation Ordinance.

Section 5. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Memorandum

City of Tempe



Date: June 12, 2008

To: Development Review Commission
Ryan Levesque, Senior Planner

From: Shauna Warner, Neighborhood Services Director

Subject: Proposed Zoning and Development Code Amendments

At the June 7, 2008 meeting of the Neighborhood Advisory Commission (NAC), a 21-member commission advising Mayor and Council on issues effecting neighborhoods, Commissioners reviewed proposed Zoning and Development Code amendments pertaining to Sec. 4-706 wall height, Sec. 4-202 building setback and Sec. 6-402 neighborhood meetings.

At the meeting, members unanimously passed a motion to support the amendments to the Zoning and Development Code.

From: Kaminski, Diana
Sent: Tuesday, July 29, 2008 7:47 AM
To: Levesque, Ryan
Subject: FW: Zoning and Development Code Amendment (PL080143)

See comments on ZDC amendment to front yard wall heights

-----Original Message-----

From: Philip Amorosi [mailto:philamo@cox.net]
Sent: Monday, July 28, 2008 10:20 PM
To: Collins, Lisa; Kaminski, Diana
Subject: Zoning and Development Code Amendment (PL080143)

Hi Lisa and Diana,

I am writing to comment on Zoning and Development Code Amendment (PL080143) which will be heard today at the Development Review Commission. I just read the changes and the only thing I have a problem with is that you want to amend the residential front yard heights. The current is 4' and you want to change that to 4' to 8' with approval on a case by case basis.

I am sorry but an 8 ft fence in the front of any residence is too high.

I object to that. I can live with 4' to 6' but because you cannot even specify the materials for the fence someone can put up an 8' high piece of plywood totally covering a deteriorating house behind it. I know because we had a neighbor years ago on a corner house who erected one on the side of his house. It was a total eyesore. The city couldn't make him take it down.

At least with a maximum of 6' you can still see the structure behind. In any case building higher walls in the front yard does not promote friendly pedestrian neighborhoods. All they need is a moat in front of the 8' high fence.

Eight foot variance is too high. Drop it to six feet with approval.

Thanks for your time,

Phil Amorosi

1432 E. Cedar St.

Tempe, AZ 85281

Chair, Hudson Manor NA









PREVIOUS IMAGE OF UNAUTHORIZED WALL HEIGHT INCREASE



APPROVED MODIFIED WALL HEIGHT, PER CONDITIONS







Levesque, Ryan

From: Philip Amorosi
Sent: Tuesday, August 19, 2008 11:00 PM
To: Levesque, Ryan
Subject: Re: FW: Zoning Code Amendments -- Draft staff report and attachments

Hi Ryan,

I have reviewed the new DRAFT staff summary report and I am satisfied that my concerns have been addressed. As long as neighbors have a say and it has to have a use permit and be compatible with the surrounding area I am okay with the front yard fence changes.

thanks for listening,

Phil Amorosi

Levesque, Ryan wrote:

Mr. Amorosi,

Attached below is the DRAFT staff summary report and related attachments for the proposed Zoning and Development Code, including request to allow taller fence heights with a use permit. Further refinements to the language are proposed. See "Attachments". Also included in the report is your memo which was handed out at our previous hearing.

If you have any further comments on the proposed text amendments that would either clarify your previous position or potentially provide support for the draft text, staff will forward the information on to the decision-making body. Or may provide staff opportunity to further refine the proposed text.

Thank you for your involvement,

Ryan Levesque

Senior Planner

City of Tempe, Development Services Dept.
(480) 858-2393

<<ATTACHMENTS.pdf>> <<DRCr_ZDCamendments_082608.doc>>

***NOTE the location change, due to an introduction on a Major General Plan Map amendment:

DEVELOPMENT REVIEW COMMISSION

AUGUST 26, 2008

Tempe Public Library

Program Room – Lower Level